

### **REMARKS**

Claims 1 and 5-18 were pending prior to this Response, with claim 10 being withdrawn due to a restriction requirement. Claims 5-9 and 11-18 were rejoined as containing the product or directed to the process of making or using the patentable product. By the present communication, no new claims have been added, claims 5, 7, 9-11, 13, 15, 17 and 18 have been cancelled without prejudice, and claim 1 has been amended to define Applicant's invention with greater particularity. The amendments add no new matter, being fully supported by the specification and original claims. Accordingly, claims 1, 6, 8, 12, 14 and 16 are currently pending in this application.

Applicant wishes to thank the Examiner for courtesies extended during the telephonic interviews with Attorney Lisa Haile on March 6, 2004 and Attorney June Learn on April 20, 2004. During the interviews patentability of the rejected claims was discussed and the Examiner informed the Applicant that claims 1, 6, 8, 12, 14, and 16 would be allowable upon cancellation of the non-elected claims.

#### **Amendment to Claim 1**

The Office Action indicates that claim 1 should be amended to distinguish over a product of nature by inserting such language as "a biologically pure culture" in connection with the strain. Accordingly, claim 1 has been amended to recite "A biologically pure culture of a microorganism *Bacillus subtilis takemi* . . . " as requested by the Examiner.

#### **The Rejection under 35 U.S.C. § 112, Second Paragraph**

Applicant traverses the rejection of claims 5, 7, 9, 11, 13, 15 and 17 under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to recite any steps involved in the method of using the claimed strain of *Bacillus*. However, to reduce the issues and advance prosecution, in the present communication claims 5, 7, 9, 11, 13, 15 and 17 have been cancelled without prejudice. In view of the cancellation of all claims rejected for alleged lack of

definiteness, Applicant submits that the presently pending claims meet all requirements under 35 U.S.C. § 112, second paragraph. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

**The Rejection under 35 U.S.C. § 101**

Applicant traverses the rejection of claims 5, 7, 9, 11, 13, 15 and 17 under 35 U.S.C. § 101 as containing an improper definition of a process due to alleged failure to set forth any steps in the process. However, to reduce the issues and advance prosecution, in the present communication claims 5, 7, 9, 11, 13, 15 and 17 have been cancelled without prejudice. In view of the cancellation of all claims rejected for allegedly containing an improper definition of a process, Applicant submits that the presently pending claims meet all requirements under 35 U.S.C. § 101. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

**The Rejection under 35 U.S.C. § 103**

Applicant traverses the rejection of claim 18 under 35 U.S.C. § 103 as allegedly being unpatentable for prima facie obviousness, especially in the absence of evidence to the contrary, over Hairston et al. (U.S. Patent No. 5,325,747) taken with Urano et al. (U.S. Patent No. 5,614,188), Cook et al. (U.S. Patent No. 5,972,689) and Heins et al. (U.S. Patent No. 6,060,051). However, to reduce the issues and advance prosecution, claim 18 has been cancelled in the present Response. Accordingly, reconsideration and withdrawal of the rejection of claim 18 for alleged obvious are respectfully requested.

In re Application of:  
Takemi Aonuma  
Application No.: 09/889,263  
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In view of the above amendments and remarks, Applicant requests favorable action on all pending claims.

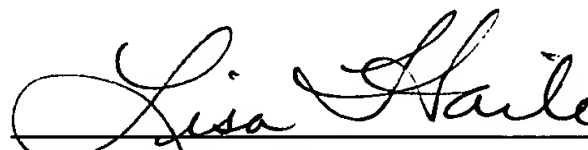
If the Examiner would like to discuss any of the issues raised in the Office Action, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application can be achieved.

**Information Disclosure Statement Mailed February 20, 2004**

Applicant brings to the Examiner's attention the Information Disclosure Statement (IDS) mailed February 20, 2004 and respectfully requests that the Examiner return an initialed copy of the Form PTO-1449 that was attached thereto, with the next Communication in this case.

Respectfully submitted,

Date: May 13, 2004



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